SBA Joint Ventures and Mentor Protégé Agreements

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Items to be Covered

- Size Requirements in Joint Ventures
- Teaming Agreements
- 8(a) Joint Venture Requirements
- 8(a) Mentor Protégé Program
- Prime/Sub Relationships and subcontracting limitations

Meeting the Size Standard in Joint Ventures

- Size Counts:
  - Small Business Set-Asides (includes SDVO and HUBZone) and 8a Procurements
  - An unrestricted procurement where you are claiming a 10% SDB Price Evaluation Preference
- Be careful about meeting the size standard of the solicitation
- A large business cannot be a JV participant on a Small Business/8(a) Set Aside Procurement
  - One exception: 8(a) Mentor Protégé Program

Joint Venture = Affiliation

- 13 CFR 121.103(f): In joint ventures, the joint venture partners are affiliated with regards to that procurement, and the revenue/employees will be combined to determine size, unless….

Joint Venture Exclusion from Affiliation Rule

- 13 CFR 121.103(f)(3):
- JV partners will not be found affiliated if:

Each concern is small and

(1) The procurement is a bundled procurement

(2) The procurement is not bundled but is a large procurement:

  (a) Revenue based size standard: the dollar value of the procurement, including options, exceeds half the size standard of the procurement

  (b) Employee based size standard: dollar value of the procurement, incl. options, is over $10 M

Teaming Agreements

- Teaming agreements include
  - Subcontracting agreements
  - Joint venture agreements
- Subcontracting agreement can be deemed a joint venture
  - Tie-in relationships exist:
    1. Joint bank accounts with joint signature requirements
    2. Joint approvals on invoices
    3. Joint authority required for most actions
    4. Unusual reliance upon teaming partner (performance, financial, bonding, management)
  - The relationship must be presented as a joint venture agreement
  - JV partners must meet performance requirements
- Subcontracting agreements subject to limitations on subcontracting set forth in 13 CFR 125.6

Limitations on Subcontracting

- 13 CFR 125.6
- The prime contractor must perform a certain percentage of work themselves:
  - Services – 50% of cost of contract incurred for personnel with its own employees
  - Supplies/Products – 50% of the cost of manufacturing the supplies or products (not including the cost of materials)
  - General Construction – 15% of the cost of the contract with its own employees (not including the cost of materials)
  - Specialty Construction – 25% of the cost of the contract with its own employees (not including the cost of material)

Applies to

- Small Business Set-Asides
- 8(a) Procurements
- SDB Price Evaluation Preference

- DOES NOT APPLY TO UNRESTRICTED PROCUREMENTS

Limitations on Subcontracting for HUBZone Contract Awards

- In addition to 13 CFR 125.6, the following applies to the HUBZone prime contractor:
  - 50% of the cost of the HUBZone contract incurred for personnel must be employees of the HUBZone SBC or other qualified HUBZone SBCs
  - HUBZone contract for general construction may meet 50% requirement by itself or it may subcontract up to 35% of the cost of the contract incurred for personnel to one or more qualified HUBZone SBCs

Limitations on Subcontracting for HUBZone Contract Awards (cont'd)

- HUBZone contract for specialty construction may meet 50% requirement by itself or it may subcontract up to 25% of the cost of the contract incurred for personnel to one or more qualified HUBZone SBCs
- A CO may waive this provision for a particular procurement after determining that at least two qualified HUBZone SBCs cannot meet the requirement. The other provisions of 13 CFR 125.6 remain in effect.

Limitations on Subcontracting for HUBZone Contract Awards (cont'd)

- Note: A qualified HUBZone SBC may enter into a joint venture only with another qualified HUBZone SBC for the purpose of submitting an offer for a HUBZone contract.

Limitations on Subcontracting for SDVO Contract Awards

- In addition to 13 CFR 125.6 the following applies to the SDVO prime contractor:
  - A SDVO contract for services – SDVO SBC must spend at least 50% of the cost of the contract performance incurred for personnel on the SDVO SBC's employees or on the employees of other SDVO SBCs.
  - A SDVO contract for general construction - SDVO SBC must spend at least 15% of the cost of the contract performance incurred for personnel on the concern's employees or the employees of other SDVO SBCs.

Limitations on Subcontracting for SDVO Contract Awards (cont'd)

- A SDVO contract for special trade contractors, – SDVO SBC must spend at least 25% of the cost of the contract performance incurred for personnel on the SDVO SBC's employees or the employees of other SDVO SBCs.
- A SDVO contract for procurement of supplies or products - at least 50% of the cost of manufacturing the supplies or products (no materials) must be performed by the SDVO SBC prime contractor or other SDVO SBCs.

Limitations on Subcontracting for SDVO Contract Awards (cont'd)

- Note: A SDVO SBC may joint venture with one or more other SBCs for the purpose of performing on an SDVO contract. The SDVO SBC joint venture must perform the applicable percentage of work.

8(a) Joint Venture Requirements

- 8(a) firm lacks necessary capacity
- Agreement is fair and equitable
- Agreement will be of substantial benefit
- 8(a) firm must bring resources and expertise
- 8(a) firm must be in good standing

Summary Contents Requirements

- Purpose
- 8(a) firm as managing venturer/project mgr
- 51% of net profits to 8(a) firm
- Special bank account
- Itemization of resources
- Responsibilities of JV parties
- Commitment to ensure performance

Contents Requirements (cont'd)

- Quarterly financial statements
- Project-end financial statements
- Performance of work requirements
- SBA must approve amendments
- SBA may inspect records
- Maintenance of accounting and administrative records by 8(a) firm
- Retention of files by 8(a) firm at completion of contract

8(a) Competitive Joint Ventures

- 13 CFR 124.513(b)(1)
- An 8a firm and one or more other businesses may submit an offer for an 8a competitive procurement without regard to affiliation provided that:
  - Each concern is small
  - The size of at least one 8(a) participant in the JV is less than ½ the size standard AND
  - Revenue based: size of procurement is at least ½ the size standard
  - Employee based: size of procurement > $10M

SBA 8(a) Joint Ventures

- SBA must receive 8(a) Joint Venture agreement prior to bid opening
- SBA must approve an 8(a) Joint Venture agreement prior to award of an 8(a) contract (not prior to bidding)
- 8(a) Joint Ventures may now be approved by the local SBA District Office

SBA Mentor-Protégé Program

- Purpose:
  - Encourage approved mentors to provide assistance to eligible 8(a) firms
  - Serve as a developmental tool to 8(a) firms
  - Enhance the capabilities of protégé

Assistance Mentor May Provide to Protégé

- Management and Technical Assistance
- Financial Assistance
- Subcontract Support
- Performing Prime Contracts through Joint Venture Arrangements

Requirements for Mentor

- Transitional Stage 8(a) firm, graduate, small business, or large business
- Possess favorable financial health
- Possess good character
- Can impart value to protégé
- Demonstrate ability to assist protégé
- Commit to provide assistance
- Not debarred or suspended

Protégé Requirements

- 8(a) firm in Developmental Stage, or
- Never received an 8(a) contract, or
- Less than half the size standard of primary NAICS
- In good standing

Benefits

- Joint Venture Arrangements
- Mentor financing of the Protégé
- Up to 40% equity interest for Mentor
- Protégé eligible for other SBA assistance
- No determination of affiliation or control

Summary of MPA Requirements

- Written agreement
- Assessment of Protégé's weaknesses and needs
- Specific assistance Mentor will provide
- One year commitment by Mentor
- Termination provision

Reasons for Denial

- Assistance insufficient to promote substantive gains or development to Protégé
- Assistance not tied to the Protégé's business developmental plan
- Merely a vehicle to receive 8(a) contracts
- Possible negative control by Mentor

8(A) Mentor Protégé Program Joint Venture Agreement

- 13 CFR 121.103(f)(3)(iii):
- Two firms approved by SBA to be a mentor and a protégé under 13 CFR 124.520 may JV as small, provided the protégé qualifies as small for the procurement (and if an 8(a) sole source procurement, has not met the dollar limit).

Joint Ventures and the Percentage of Work

- When the “exclusion from affiliation rules” (including Mentor Protégé) apply:

The performance of work requirements apply to the cooperative effort of the joint venture partners, not its individual members.

Example

- Small Business Set-Aside
- To provide a service
- Small Business A: can only do 25% of job with his own people
- Small Business B: can only do 25% of job with his own people
- Neither A nor B can bid the job alone.
- However, if they form a Joint Venture, they can combine their efforts, doing 50% with their own people, and can bid the job.

References

1. SBA Mentor Protégé Guidelines, FACT Sheet, Power Point
   - www.sba.gov/8abd
2. Code of Federal Regulations
   - http://www.access.gpo.gov/nara/cfr/
     SBA Size Rules: 13 CFR 121
     SBA 8(a) Joint Venture Rules: 13 CFR 124.513
     SBA Mentor Protégé: 13 CFR 124.520
     SBA Subcontracting Limitations: 13 CFR 125.6 and FAR 52.219-14
3. NAICS Codes/Size Standards – search by keyword
   - https://eweb1.sba.gov/naics/dsp_naicssearch2.cfm

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